

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF SECRETARY

In the Matter of)	
)	
Replacement of Part 90 by Part 88 to)	
Revise the Private Land Mobile Radio)	
Services and Modify the Policies)	
Governing Them)	
)	PR Docket No. 92-235
and)	
)	
Examination of Exclusivity and)	
Frequency Assignment Policies of)	
the Private Land Mobile Radio Services)	

**Comments of The Ericsson Corporation in Response to the Further Notice of
 Proposed Rule Making**

The Ericsson Corporation (hereinafter referred to as "Ericsson"), hereby files its comments in response to the *Further Notice of Proposed Rule Making* in the above-captioned proceeding.¹ In support thereof, Ericsson states the following:

The FNPRM seeks comments on mechanisms by which the Commission can promote "more efficient and effective use of the PLMR bands below 800 MHz."² The Commission believes that spectrum efficiency in this band can best be encouraged by

¹ *In the Matter of Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Radio Services, Report and Order and Further Notice of Proposed Rule Making, FCC 95-255, 10 FCC Rcd 10076 (released June 23, 1995). ("FNPRM").*

² FNPRM, para. 110.

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introducing the concept of spectrum exclusivity and resale of excess capacity in a band which has traditionally been characterized by shared use radio systems:

We believe that offering users the option of exclusivity with the right to resell excess capacity if they agree to convert to narrowband technology by a specified date will promote the use of more efficient technologies such as trunking and TDMA, which are incompatible with the use of other traditional technologies on the same channel.³

Ericsson fully supports the foregoing concept. Of the three options proposed for transitioning to exclusive use of PLMR spectrum below 800 MHz, Ericsson asserts that the Commission's Exclusive Use Overlay ("EUO") proposal with certain additional modifications, is preferable to a regulatory scheme based on auctions or spectrum fees.

The use of auctions is not the most appropriate manner in which to transition to exclusive frequency use in the PLMR band below 800 MHz for a variety of reasons. First, public safety entities (which rely on public funding in order to purchase telecommunications facilities) and PLMR entities (which are generally small businesses) do not have sufficient funds to compete in auctions. Second, neither public safety nor non-CMRS PLMR entities, including many utility licensees, have a "commercial" subscriber base which can be used to support bids for spectrum. Such licensees typically use their spectrum for their own internal purposes. Third, relatively large market areas which are needed to conduct auctions in an administratively efficient manner, such as MTAs, BTAs and EAs, do not necessarily bear resemblance to the varied sizes and shapes of shared systems used by PLMR licensees below 800 MHz.

³ FNPRM, para. 113

The use of spectrum fees as an alternative to competitive bidding is similarly unsuited for the PLMR band below 800 MHz, especially spectrum fees which are designed to approximate the revenue generated by the auction of licenses in the narrowband PCS service.⁴ Whether revenue for the use of radio spectrum is generated by competitive bidding or spectrum fees, the fact remains that public safety organizations and other numerous small businesses which operate in this band, can not afford to expend funds comparable to the winning bids for narrowband PCS licenses. As noted above, public safety licensees are dependent on public funds to make their telecommunications systems purchases and small businesses do not have the financial capability of paying spectrum fees which are comparable to those expended for narrowband PCS services. Since neither public safety entities nor small businesses in the PLMR band below 800 MHz have a subscriber base from which to recoup amounts paid for licenses like their CMRS counterparts, any expenditures made by such entities in order to gain exclusive use of spectrum poses a greater burden on non-CMRS licensees than on CMRS licensees.

Because auctions and spectrum fees are both unsuitable mechanisms for transitioning to exclusive spectrum use, Ericsson suggests that the remaining option, i.e. the EUO option⁵ with unlimited resale, is the most appropriate mechanism to use to transition to exclusivity for those licensees that agree to convert to narrowband technology by a date certain. Though Ericsson supports the Commission's EUO option

⁴ FNPRM, para. 138

⁵ EUO licenses should be awarded when at least 75% of the eligible licensees agree to an EUO arrangement. Eligible licensees that choose not to enter into an EUO arrangement should be required to migrate to shared channels

with unlimited resale as a general matter, it proposes some modifications to make the EUO proposal more efficient and to promote greater competition.

First, the term “narrowband” in the context of this proceeding is too narrow. It is tentatively defined as “...equipment designed to operate on channel bandwidths of 7.5 kHz or less at VHF and 6.25 kHz or less at UHF or any equivalent technologies.”⁶ Ericsson submits that the benefits of EUO licensing should be available to all licensees who follow the Commission’s transition plan to narrowband technology as adopted in the *Report and Order* in this proceeding. Thus, rather than granting EUO licenses to those licensees who agree to convert only to 6.25 or 7.5 kHz channelization, the benefits of EUO licensing should be made available to licensees who agree to use equipment type accepted under the provisions of Section 90.203(j)(2), (3), (4) or (5), including 12.5 kHz equipment or equipment with the equivalent spectrum efficiency. This will have a number of important benefits including, but not limited to, making EUO licenses available to more licensees than would be the case if EUO licenses were only available to those using 6.25 or 7.5 kHz channelization or the equivalent thereof.

To accomplish this result, Ericsson suggests that from August 1, 1996 to January 1, 2000, EUO licenses may be granted to those licensees who commit to use equipment designed to operate on channel bandwidths of 12.5 kHz or less on VHF or UHF frequencies, or the equivalent thereof. Subsequent to August 1, 2000 EUO licenses may only be granted to those entities which commit to use equipment designed to operate on channel bandwidths of 6.25 or 7.5 kHz, or the equivalent thereof.

⁶ FNPRM, n. 199.

Second, consistent with its view that MTAs, BTAs and EAs are not market designations which are particularly well suited for the PLMR band below 800 MHz, Ericsson supports exclusivity being granted on a station by station basis. The PLMR band below 800 MHz is already heavily occupied with existing licensees who operate a wide variety of radio systems of differing configurations and sizes. Unlike CMRS services in which licensees and subscribers both generally desire wide area coverage due to the attendant efficiencies that can be obtained therefrom, radio systems in the PLMR band below 800 MHz generally provide service to meet the particularized needs of a rather closed group of users. An EUO regulatory scheme which provides licensees with the flexibility to freely negotiate exclusivity agreements with those co-channel licensees in which there may be common interests, will lead to a more efficient allocation of resources than would be the case if arbitrary market-based service areas were used for licensing purposes.⁷

Third, Ericsson fully agrees with the Commission that unlimited resale should be allowed by EUO licensees. This will enable those who commit to narrowband technology to defray some of the costs which will be incurred in deploying new technology. However, Ericsson does not agree that PLMR licensees who engage in resale should be considered CMRS providers unless the spectrum is predominately used for CMRS purposes. The regulatory burdens associated with CMRS classification that would be imposed on exclusive licensees in the PLMR band as a result of providing some resale, would be excessive. This would create disincentives for licensees to seek exclusive

⁷ An additional benefit of the EUO proposal is that the licensees rather than the Commission will take the lead in reaching voluntary agreements. This conserves valuable Commission resources.

licenses, thereby serving to thwart the purposes the FCC intends to accomplish as a result of this proceeding.

In addition to the foregoing general comments, Ericsson submits the following responses to some of the specific questions raised by the Commission in the FNPRM.

What amount of time should licensees who agree to convert to narrowband technology in exchange for exclusivity be allowed to actually convert their systems?

Ericsson proposes that non-public safety EUO licensees be required to have their systems constructed and operational within two years of the date their EUO licenses are granted by the FCC. This build out requirement is feasible for non-public safety licensees since it is a time frame within which licensees can construct, test and make their systems operational. Ericsson also proposes that public safety EUO licensees be required to have their systems constructed and operational within five years of the date their EUO licenses are granted. The extended build out requirement for public safety licensees is necessary due to the nature of government funding cycles and the public bidding process.

In this regard, Ericsson is of the opinion that there is no need for the Commission to require exclusive licensees to submit detailed implementation plans for narrowband systems. A simple requirement that systems be deployed and operational within 2 years or 5 years of the grant of an EUO license as the case may be, is preferable to a more complex regulatory scheme which imposes costs upon PLMR licensees in excess of any benefits that might be obtained. To ensure that EUO licensees do not warehouse spectrum and do indeed convert to narrowband technology, Ericsson submits the Commission should merely require EUO licensees to certify to the Commission on or before the 2 year or 5

year deadlines as the case may be, that the system has been fully constructed and is operational.

Should exclusivity be available on all channels or should some channels be reserved for shared use?

With the exception of itinerant and paging channels, all channels should be eligible for exclusive use. If there are truly benefits to be derived from making the shared use PLMR band below 800 MHz an exclusive use band, in whole or in part, licensees will naturally migrate to exclusive use on their own volition. To the extent the market foresees a need for shared channels, they, too, should be available.

Should single entities be permitted to obtain exclusivity?

Yes. Large, private system users are likely to deploy spectrum efficient technologies such as TDMA and trunking in order to obtain greater spectrum capacity to meet increased demands. Large private system licensees may also desire to deploy additional, new digital services on existing spectrum, including but not limited to, mobile data services. In order to meet such demands, exclusive use channels for single entities may be necessary.

Should exclusivity be limited to existing users?

No. Exclusive channel assignments should not be artificially limited to existing users. Though many of the UHF and VHF channels are already licensed, it is likely that many exclusive licensees will be existing users. However, to promote competition, new entities that acquire channels in an area should be able to avail themselves of the opportunity to use the spectrum in an efficient manner.

What standards for narrowband efficiency should be required for exclusivity?

As noted above, any rules adopted by the Commission for exclusive licenses in the PLMR band below 800 MHz should be consistent with the Commission's overall approach to implementing spectrum efficiency in the Refarming band. That is, EUO licenses should be available to parties that reach exclusive use agreements and who propose to use equipment meeting the Type Acceptance standards set forth in Section 90.203(j)(2), (3), (4) or (5).

The Federal government currently allows trunking of 12.5 kHz UHF and VHF channels. The FCC should similarly permit trunking of 12.5 kHz channels by licensees subject to its jurisdiction. This will have the impact of creating incentives for manufacturers to offer a greater variety of mobile, portable and base station equipment to serve a larger market. Increased market size and the attendant efficiencies of scale and scope realized by manufacturers will serve to promote competition which, in turn, will reduce the cost of equipment for system operators.

Respectfully submitted,

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